United Nations CERD/C/ESP/CO/21-23

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
21 June 2016
English
Original: Spanish

Committee on the Elimination of Racial Discrimination

Concluding observations on the twenty-first to twenty-third periodic reports of Spain*

1. The Committee on the Elimination of Racial Discrimination considered the combined twenty-first to twenty-third periodic reports of Spain, submitted in a single document (CERD/C/ESP/21-23), at its 2424th and 2425th meetings (CERD/C/SR.2424 and SR.2425), held on 26 and 27 April 2016. At its 2443rd and 2444th meetings, held on 11 May 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee appreciates the timely submission of the combined twenty-first to twenty-third periodic reports of the State party. The Committee welcomes the frank and constructive dialogue held with the State party's delegation and the supplementary information provided after the dialogue.

B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party during the period covered by the reports, in particular:

(a) The measures adopted as part of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance;

(b) The reform of the Criminal Code, which made more explicit the regulations on genocide and acts of incitement to hatred and to discrimination;

(c) The adoption of the National Strategy for the Social Inclusion of the "Gitano" Population for the period 2012-2020 and the related annual action plans.

4. The Committee commends the progress in gathering statistical data and information on racist and xenophobic incidents and, in that connection, welcomes:

(a) The publication of a training handbook to assist members of the security forces in recognizing and documenting racist and xenophobic incidents;

* Adopted by the Committee at its eighty-ninth session (25 April-13 May 2016).

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(b) The establishment of hate crime specialist units within all provincial public prosecutors' offices and the appointment of a divisional special prosecutor to oversee coordination of anti-discrimination activities at the national level.

C. Concerns and recommendations

Information on the population

5. The Committee notes once again that the State party's report does not contain recent, reliable data on economic and social indicators that could be used, in particular, to compare the status of minorities and immigrants with that of the general population as a basis for arriving at a more accurate assessment of the extent of their enjoyment of their economic, social and cultural rights in the State party (art. 1).

6. **While understanding the concerns expressed by Spain to justify its position, the Committee invites the State party, in the light of its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention, to consider refining the tools that it uses to compile and publish data, disaggregated by territorial collectivity, on the demographic composition of its population and to adopt suitable methods that provide for self-identification and anonymity.**

Legislative and institutional measures

7. The Committee notes with satisfaction the adoption of a number of legislative and institutional measures against racial discrimination. However, the Committee is concerned that (art. 2):

(a) The comprehensive bill on equal treatment and non-discrimination, which was commended by the Committee, has yet to be adopted, despite the fact that it was referred to the legislature in 2011;

(b) Despite the efforts begun in 2012 towards the elaboration of a second human rights plan, such a plan has yet to be adopted;

(c) The Council for the Elimination of Racial and Ethnic Discrimination continues to suffer from the shortcomings previously highlighted by the Committee, including a lack of independence and resources, which in turn hinders the effective implementation of the Council's mandate.

8. **The Committee recommends that the State party:**

(a) **Intensify its efforts to adopt rapidly the comprehensive bill on equal treatment and non-discrimination;**

(b) **Take the necessary steps to speed up the elaboration and adoption of a second human rights plan and ensure that the plan includes proposals from civil society, the Committee and other human rights mechanisms. It also recommends that the State party effectively implement the plan, once adopted, including through the provision of sufficient resources;**

(c) **Take the necessary measures to ensure that the Council for the Elimination of Racial and Ethnic Discrimination has the required resources and independence for this type of body as set out in general policy recommendations Nos. 2 and 7 of the European Commission against Racism and Intolerance.**

Information on racist incidents

9. The Committee welcomes the progress made in the collection of data on crimes related to racial and ethnic discrimination. Nevertheless, it notes the need to strengthen follow-up efforts regarding such data (arts. 2 and 6).

10. **The Committee invites the State party to include in its next periodic report information on the measures adopted to improve follow-up action on data collection, including the gathering of information on the cases prosecuted, sentences handed down and reparation provided, as well as information on the collection of data on non-criminal racist incidents.**

Migrants, asylum seekers and refugees

11. The Committee is concerned that Decree-Law No. 16/2012 has restricted undocumented migrants' access to universal health care. The Committee notes that this retrogressive measure has a negative impact on the right to health of the persons concerned (arts. 2 and 5).

12. **In the light of its general recommendation No. 20 (1996) on article 5 of the Convention and its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party reinstate universal health care so as to ensure the right to health without discrimination.**

13. The Committee welcomes the adoption of regulations on the operation and internal rules of migrant holding centres (Royal Decree No. 162/2014), which allow detainees to file complaints and to contact non-governmental organizations (NGOs); provide for legal assistance; and establish the position of judges responsible for reviewing detainees' complaints. Nevertheless, the Committee is concerned that the regulations fail to resolve a number of issues, for instance, the lack of confidentiality of complaints, insufficient health coverage and the lack of interpreters. The Committee notes that the migrant holding centres are not part of the penitentiary system under domestic legislation; it remains concerned however that, in practice, detention in a migrant holding centre constitutes effective deprivation of liberty (arts. 2 and 5).

14. **The Committee urges the State party to take the necessary measures to prevent the continued use of deprivation of liberty with regard to undocumented migrants and to ensure that such deprivation of liberty, when it occurs, is reasonable, necessary and proportionate. It further recommends that alternative measures always be considered. The Committee also urges the State party to take the steps necessary to resolve the ongoing problems within the migrant holding centres, in particular to ensure that complaints of torture and abuse are investigated impartially, expeditiously and exhaustively, and that the perpetrators are punished appropriately.**

15. Despite the steps taken by the State party to strengthen the institutions responsible for processing asylum applications, the Committee is concerned about the lengthy procedures and about the impact of the budget cuts on assistance programmes for asylum seekers, as such programmes do not usually cover the period of consideration of the application. Moreover, the Committee is concerned that asylum applications submitted by persons from certain countries in conflict, particularly countries of sub-Saharan Africa, tend to take longer to process (arts. 2, 5 and 6).

16. **The Committee recommends that the State party take the necessary steps to reduce the time required to process asylum applications and, more particularly, that it adopt specific measures to eliminate delays in processing the applications of persons from countries in conflict and to ensure that such applications are processed without discrimination on the basis of ethnic origin or nationality. Moreover, it urges the State**

party to allow asylum seekers to remain in special centres while their applications are processed.

Ceuta and Melilla

17. The Committee takes note of the establishment of offices equipped to receive requests for asylum in Ceuta and Melilla. However, it expresses grave concern at the practice engaged in by the Spanish security forces at the borders of Ceuta and Melilla of summarily returning individuals before they have had access to those offices. In particular, it is a matter of concern that the Civil Security Act (Organic Act No. 4/2015) permits denial of entry at the border without any prior examination of the risk involved in return, thereby impeding access to asylum procedures. The Committee is also concerned at reports indicating that non-Syrian applicants or those from other Arab countries are denied access to the above-mentioned offices (arts. 2, 5 and 6).

18. **The State party is urged to amend the Civil Security Act and guarantee access to asylum procedures for all persons who may be entitled to international protection, without any discrimination as to ethnic origin or nationality, including an individual assessment in each case, as well as guaranteeing protection from indiscriminate refoulement and the establishment of an independent body to review and suspend negative decisions.**

19. The Committee takes note of the investigations into the crimes of murder, negligent injury and professional misconduct carried out in respect of the events of 6 February 2014 at El Tarajal beach, which resulted in the death of 15 immigrants. The Committee also notes that on 15 October 2015 the sixth examining magistrate's court of Ceuta decided to shelve the cases. The Committee awaits the outcome of the appeals lodged against this decision, as well as on possible disciplinary penalties and processes by which those bearing political responsibility for these events are held to account. The Committee is also concerned at reports of ill-treatment perpetrated during deportation operations both by Spanish officials and by Moroccan officials operating on Spanish soil (arts. 5, 6 and 7).

20. **The Committee associates itself with the appeals made by other treaty bodies, including the Human Rights Committee and the Committee against Torture and by groups in Spanish society for the prompt, effective, exhaustive and transparent investigation of the allegations concerning excessive use of force by the security forces, particularly in respect of incidents which occurred during deportation operations, including those at El Tarajal, as well as punishment of those responsible and proper reparation to the victims. It is also recommended that the necessary steps should be taken to prevent foreign officials from committing human rights violations on Spanish soil.**

21. While the Committee appreciates the steps taken to improve conditions in the migrant holding centres in Ceuta and Melilla, it is concerned about overcrowding and the scant psychological and legal support provided, as well as the lack of steps taken to identify specific needs, such as those of single women and single mothers, so as to avert risks to health and security and possible incidents of sexual and gender-related violence, as well as the impact of the economic crisis on the services offered in such centres. It further expresses concern at restrictions on the freedom of movement of asylum seekers, and the lack of clarity in the criteria governing their transfer to the mainland (arts. 2, 5 and 6).

22. **The State party is urged to redouble its efforts to improve the conditions in the migrant holding centres, especially in terms of overcrowding, and to take steps to strengthen the psychological and legal support offered and to identify the specific needs of the persons located in the centres, especially single women and single mothers. The State party is also urged to review the restrictions on the freedom of movement of**

asylum seekers and to establish clear, transparent and speedy procedures for their transfer to the mainland.

"Gitanos" and Roma

23. The Committee notes with satisfaction that the State party continues to take steps intended to improve the situation of "Gitanos", including the adoption of special measures. However, it is concerned that difficulties in employment, housing, education and equal wages persist, as do daily displays of discrimination against them. It also expresses concern at the situation of Roma originating from Eastern Europe, who encounter major difficulties in the above-mentioned areas (arts. 5 and 7).

24. **The Committee urges the State party to step up efforts to improve the situation of "Gitanos", and to include in its next periodic report indicators of progress in discharging its obligations vis-à-vis this community under the Convention. It also urges the State party, in the light of its general recommendation No. 27 (2000) on discrimination against Roma and its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, to take the necessary steps to promote tolerance and overcome prejudice and negative stereotypes so as to avoid any kind of discrimination against "Gitanos" and Roma. The State party is also urged to take specific and effective steps to improve the situation of Roma.**

Mass media and social media

25. The Committee notes the existence of negative stereotypes relating to various minorities in the mass media and social media. It also takes note of accounts describing the tendency of the media to include references to the ethnic or racial origin of the alleged offenders when reporting on crimes (arts. 2, 4, 5 and 7).

26. **The Committee recommends that the State party take the necessary measures to overcome stereotypes in the mass media and social media, including the establishment of an independent and impartial body, or the repurposing of an existing body, with the necessary resources to monitor the effective implementation of such measures. The Committee urges the State party once again, in accordance with articles 4 and 7 of the Convention and in the light of the National Plan for the Alliance of Civilizations, to promote the responsible use of the media to combat incitement to hatred and racial discrimination, and to promote general awareness of diversity in all media and social networks.**

Identity checks

27. The Committee notes with satisfaction that the principles of proportionality, equal treatment and non-discrimination in respect of identity checks have been included in the Civil Security Act. However, the Committee is concerned at reports that identity checks based on ethnic and racial profiling have continued since the Act entered into force (arts. 2, 5 and 6).

28. **The Committee urges the State party to take the necessary measures to put an end to identity checks based on racial and ethnic profiling once and for all, and recommends that such acts should be properly investigated and punished appropriately.**

People of African descent

29. The Committee takes note of the Government's initiatives to integrate the African population in Spanish society. However, it is concerned about structural discrimination, which affects both people of African origin who have migrated directly from Africa and

those who are descendants of the transatlantic slave trade and slavery. While they have different backgrounds, both groups suffer the consequences of structural barriers, which have a negative impact on the full enjoyment of their rights in Spain, including in the areas of political participation, education, employment and other aspects of public life. The Committee is further concerned about the use of the term "second-generation migrants" as a means of stereotyping people of African origin. The Committee is also concerned at the lack of dialogue between the State party and people of African origin and of African descent in Spain about the legacy of slavery and colonialism (arts. 2, 5 and 7).

30. **Bearing in mind its general recommendation No. 32 (2009) and its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party:**

(a) **Draw up and put into effect special measures to secure equal opportunities for participation by people of African descent in public employment and governmental bodies;**

(b) **Carry out education campaigns which include information on the eras of slavery and colonization, and the racial discrimination encountered by people of African descent, as well as its impact on the economic development of Spain;**

(c) **Agree to initiate an open dialogue, in the framework of the Comprehensive Strategy against Racism, and with the full participation of the affected groups, concerning slavery, the transatlantic slave trade and their enduring consequences.**

Right to education

31. The Committee is concerned at the fact that significant differences persist in the quality of education which have an adverse impact on minorities. It is also concerned at the persistence of the phenomenon of "ghetto" schools, which contain high numbers of migrant and "Gitano" children (arts. 2, 5 and 7).

32. **The Committee recommends that the State party redouble its efforts to guarantee the quality of education in a uniform and fair manner, allocating the resources required for this purpose. It encourages the State party to adopt effective educational policies which ensure the fair distribution of pupils, so as to eliminate the phenomenon of "ghetto" schools.**

Business and human rights

33. The Committee welcomes with satisfaction the State party's ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization and the adoption of the draft national plan on business and human rights. However, it is concerned at the fact that no steps have yet been taken in relation to transnational corporations headquartered in Spain, whose activities, especially in the mining sector, adversely affect the rights of indigenous peoples and persons of African descent in the countries in which they carry out those activities (arts. 2, 5 and 6).

34. **The Committee recommends that the State party take appropriate legislative steps to prevent such corporations from engaging in activities which adversely affect the rights of indigenous peoples and persons of African descent in the countries in which they carry out those activities, and that they should be made accountable for their actions. It also recommends the speedy and definitive adoption of the national plan on business and human rights in a transparent process, involving civil society and representatives of indigenous peoples and persons of African descent, to ensure**

that projects which may have an impact on the rights of indigenous peoples and persons of African descent are made subject to prior consultation.

D. Other recommendations

Ratification of other treaties

35. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Reduction of Statelessness.

36. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, a decision that was adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111, on 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Durban Declaration and Programme of Action

37. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

38. In the light of General Assembly resolution 68/237 proclaiming the International Decade for People of African Descent (2015-2024) and resolution 69/16 on the programme of activities for the implementation of the International Decade for People of African Descent, the Committee recommends that the State party develop and implement an appropriate programme of measures and policies. The Committee also requests that it include in its next periodic report specific information on the practical measures adopted within this framework, in the light of its general recommendation No. 34 (2011).

Dissemination of the periodic report and concluding observations

39. The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations in respect of these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Dialogue with civil society

40. The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report and in follow-up to the present concluding observations.

Follow-up to concluding observations

41. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 12 (reinstatement of universal health care) and 28 (measures against identity checks based on racial and ethnic profiling) above.

Paragraphs of particular importance

42. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 24, 26 and 30 above, and requests the State party to provide in its next periodic report detailed information on the specific measures taken to implement them.

Preparation of the next report

43. The Committee recommends that the State party submit its combined twenty-fourth to twenty-sixth periodic reports in a single document by 4 January 2020, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the word limit of 21,200 words for periodic reports.